



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

**75 Hawthorne Street
San Francisco, CA 94105-3901**

Mail Code: WTR-9

WATER PERMITS

NOV 19 2001

RECEIVED

November 8, 2001

Adrain Taylor
Merrill Mining L.L.C.
3232 Cobb Parkway, PMB 315
Atlanta, GA 30339

Re: Requirements for Transfer of UIC permit #AZ396000001

Dear Mr. Taylor:

We received your facsimile, dated November 7, 2001, notifying us that you are in the process of procuring an irrevocable standby letter of credit for \$1,066,000 and standby trust fund. We understand that this will be submitted to Mr. Wayne Nastri, the Regional Administrator of EPA Region 9, in addition to the Arizona Department of Environmental Quality and Arizona State Land Department. It is also our understanding that this amount will cover closure costs of the existing wells and facilities. BHP Copper, Inc. continues to be financially responsible for closure and post-closure work until the time that Merrill Mining L.L.C. provides EPA with aforementioned letter of credit [40 C.F.R. §144.52(a)(7)].

In accordance with 40 C.F.R. §144.38(b), before the federal Underground Injection Control permit #AZ396000001 to BHP Copper can be transferred automatically to Merrill Mining, a written agreement, between Merrill Mining and BHP Copper, that contains a specific date for the transfer and clarifies permit responsibility, coverage and liability between the two parties must be provided to EPA.

Because the aforementioned letter of credit only covers the closure costs of the existing wells and facilities, Merrill Mining shall notify EPA at least 30 days prior to any expansion of the existing facilities or construction of any additional wells. At that point, Merrill Mining will provide EPA with a revised cost estimate to cover the increased closure and post-closure costs associated with the expansion and/or increase in the number of wells [40 C.F.R. §144.62(c)]. This cost estimate will include any increase in aquifer cleanup and monitoring costs associated with the expansion and/or increase in wells [40 C.F.R. §146.10 (d)]. Prior to the construction of new wells and facilities, Merrill Mining's financial assurance mechanism will be increased accordingly to cover any additional closure or post-closure costs.

For clarification, EPA does not have the regulatory ability to accept a deed as financial assurance mechanism. However, we can accept surety bonds, letters of credit, plugging and abandonment insurance, financial test and corporate guarantee, or a combination of these [40 C.F.R. §144.63 (c, d, e, f, and g)]. EPA can also accept state-required financial assurance mechanisms if these are equivalent to what EPA would require (40 C.F.R. §144.65). Therefore, the Arizona

Department of Environmental Quality can hold the letter of credit for EPA. However, a copy must be provided to EPA.

Thank you for providing us with documentation that you are meeting State requirements. We request that you continue to provide us with documentation that you are meeting all necessary State and local agency requirements.

If you have any question regarding this, please call me at (415) 972-3538 or Martin Zeleznik at (415) 972-3543.

Sincerely,

Shannon FitzGerald
For
Laura Bose
Manager
Ground Water Office

cc: John Kline, BHP Copper
David Ramras, Ramras Law Offices
Jarrell Southall, Brown and Caldwell
Michele Robertson, ADEQ
✓ Eric Wilson, ADEQ
Richard Bark, Gallagher and Kennedy
Pamela Gate, Bryan Cave